

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5523 of 2001

with

SPECIAL CIVIL APPLICATION No 5541 of 2001

with

SPECIAL CIVIL APPLICATION No 5868 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT SANCHAR NIGAM LTD THROUGH CHIEF GENERAL
MANAGER & ORS.

Versus

JM PARMAR & ORS

Appearance:

MS PAURAMI B SHETH for Petitioners (In all SCAs)
MR SHALIN MEHTA for Respondent-Association
(In SCA 5541/01)

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.A.PUJ

Date of decision: 06/12/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. These are the petitions under Article 227 of the Constitution of India by Union of India representing the Bharat Sanchar Nigam Limited, through its Chief General Manager, Telecom, Gujarat Circle, challenging the orders of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, dated 17.10.2000 and 5.12.2000.

#. The brief facts required to be stated are as under:

The respondents-employees in these petitions were allowed to serve on the upgraded post in Grade-IV under Biennial Cadre Review (BCR) Scheme as they had served on the upgraded posts and were accordingly given pay and benefits attached to the same for a considerable period. These respondents-employees were aggrieved by their reversions on the basis of the impugned Circular dated 30.12.1999 issued by the Government of India, Department of Telecom Services, Sanchar Bhavan, New Delhi. By this Circular, the following decision was taken and conveyed to all Heads of Telecom, Circles, Metro Districts, Project Circles and other Administrative Units:

Kindly refer to this office letter No.22-6/94-TE-II dated 13.02.1997 in which it was decided that the promoted officials who will be rendered ineligible for promotion to Gr.IV in pursuance of the order No.22-6/94/TE-II dated 13.12.1995 may be protected from reversion by creating as many supernumerary posts as required from person to person basis.

The matter has been considered and it has been decided that Gr.IV officials whose reversion were protected through creation of supernumerary posts vide Ir. dated 13.02.1997 and who were otherwise ineligible for Gr.IV promotion in accordance with the procedure prescribed vide order dated 1.12.1995 may be reverted immediately with pay

protection under the provisions of FR.31A. The additional pay may be treated personal to them and this should be adjusted in their future increments.

This issues with the concurrence of Telecom.

Finance Advice vide their DY.No.3706/FA.I/99 dated 15.12.1999.

#. It is not in dispute that reversion of SC/ST employees like the present respondents-employees from the upgraded post was challenged before the Principal Bench of the Central Administrative Tribunal, New Delhi, and the said Bench, by an order dated 2.6.2000 in Original Application No.425 of 2000, set aside the reversions of the employees therein and not only quashed the impugned orders of reversion but also the Circular dated 30.12.1999 which was the basis of reversion. The operative part of the judgment of the Principal Bench of the Tribunal at New Delhi reads as under:

6.0 In view of the above discussions, we are of the view that the action of the respondents in reverting the applicants by the impugned orders dated 12.2.2000, is not in order. Accordingly, the impugned orders dated 30.12.1999 and dated 12.2.2000 are hereby quashed. The order of the respondents dated 13.12.1997 shall continue to be operative.

This judgment of the Principal Bench of the Central Administrative Tribunal, New Delhi, was carried to the Delhi High Court, and the Delhi High Court, by its judgment dated 13.8.2001 in Civil Writ Petition No.7302 of 2000, dismissed the said writ petition of the Department and upheld the order of the Principal bench of the Central Administrative Tribunal at New Delhi.

#. In the case before us, the respondents-employees similarly challenged their reversions on the basis of the impugned Circular mentioned above before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, and by the impugned orders dated 17.10.2000 and 5.12.2000, the Tribunal allowed the petitions filed by the respondents-employees by setting aside their reversions mainly on the ground that before making reversion and changing the policy with regard to reversion from the upgraded posts, the respondents-employees, individually and as a class belonging to SC/ST, were not given opportunity of hearing. The relevant part of the impugned order of the Tribunal reads as under:

Our examination of present OAs shows that substantial number of applicants were holding the post of TOA Grade IV posts for about 10 years and these applicants were also seniors to others in TOA Grade III at the time of their promotions to TOA Grade IV. Admittedly, the applicants were not issued any show cause notice before reverting them to the lower grade. In our considered view the judgment of the Principal Bench in OA 425 of 2000 would be applicable to the facts in the present OAs also.

#. Ms.Paurami Sheth, learned counsel appearing for the Department made strenuous efforts to persuade us to reverse the judgment of the Tribunal on the ground that there are series of decisions of other Benches of the Central Administrative Tribunal as also of the High Courts taking a view that Reservation Roster cannot be made applicable to upgraded posts as it is made applicable in the present case. It is also sought to be urged that the respondents-employees were given upgraded posts and consequential pay and benefits attached to it on specific condition that they are liable to be reverted.

#. Mr.P.H.Pathak, learned counsel appears by seeking permission from this Court to intervene on behalf of All India Non Scheduled Castes/ Scheduled Tribes Telecom Employees Association and submits that the decision of the Principal Bench of Delhi Tribunal and the Delhi High Court is totally distinguishable from the present case because therein, the employees had undergone qualifying examination which is not the case here and in case the reversion of the respondents-employees is set aside, then it would affect the prospects of the interveners in their service as many employees of reserved category who are junior to the employees belonging to General Category would steal a march.

#. After hearing the learned counsel appearing for the parties, in our considered opinion, it is not necessary and open for us to go into the larger question as to whether Reservation Roster can be made applicable to upgradation of post or not. What is clear to us from the Circular dated 30.12.1999 issued by the Government of India is that earlier, a decision was taken by the Department to create supernumerary posts to absorb those who were working for long on upgraded posts but the said decision was subsequently reversed and a decision was taken to revert them immediately with only pay protection

under the provisions of Fundamental Rule 31A. The Ahmedabad Bench of the Tribunal, by the impugned orders, has merely taken a view that such a decision abruptly cannot be taken without giving hearing and participation of a class of employees who were earlier upgraded and who had worked on the said post, may be after qualifying or without qualifying in the examination. By the impugned orders of the Tribunal of Ahmedabad Bench, the order of reversion of the respondents-employees have been set aside mainly on the ground of breach of principles of natural justice and we find no error in the same.

#. It is also not possible for us to accept the argument advanced on behalf of the Department that in view of other decisions of the Tribunals and High Courts, the decision of the Tribunal of Ahmedabad Bench impugned in these petitions should be quashed and set aside. It is not disputed that the Circular dated 30.12.1999 which is the basis of the impugned reversions of the respondents-employees has been quashed by the Principal bench of the Tribunal at New Delhi and the said order has received seal of approval of the High Court of Delhi. In these circumstances, we find that the Tribunal of Ahmedabad Bench has not committed any error in setting aside the reversions of the respondents-employees on the ground of breach of principles of natural justice. We cannot, at this stage when the Circular dated 30.12.1999 of the Government of India has been set aside by the Principal Bench of the Tribunal, New Delhi, allow the Union of India as petitioners in this case to rely on it and uphold their action of reversion.

#. So far as the grievances raised by the interveners representing the employees of General Category are concerned, since they were not party before the Tribunal, at their instance, we cannot set aside the orders of the Tribunal in these petitions under Article 227 of the Constitution of India. In our opinion, such employees of General Category may have individual cause of action for enforcing their right.

##. In view of the foregoing discussion, all these petitions fail and the same are hereby rejected. Rule is discharged in all these petitions. No order as to costs.

##. Lastly, the learned counsel appearing for the petitioners made a request that reasonable time be given to the petitioners to implement the orders of the Tribunal and this is necessary because they are facing contempt proceedings before the Tribunal. The request appears to be reasonable. We therefore grant two months'

time, to the petitioners, from the date of receipt of copy of this order, to implement the orders of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad. A copy of this order be supplied to the learned counsel for the parties within three days.

(D.M.Dharmadhikari, C.J.)

(K.A.Puj, J.)

(sunil)